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FREEMAN *v.* COMMONWEALTH.

June 29, 1921.

[107 S. E. 707.]

1. Homicide (§ 253 (1)*)—Evidence Held to Sustain Conviction of Murder in the First Degree.—Evidence held to sustain conviction of murder in the first degree.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 152.]

2. Criminal Law (§ 939 (1)*)—Evidence of Number of Wounds Inflicted Not Ground for New Trial.—In a prosecution for murder by shooting with a pistol, evidence as to the number of wounds inflicted or shots fired into the body of the deceased could not have been "after-discovered" evidence as to which any diligence was employed in discovering.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 448.]

3. Criminal Law (§ 687 (1)*)—Opening Case for Further Evidence by Commonwealth Held Not Abuse of Discretion.—Where in a prosecution for homicide, after the evidence was all in, the case was adjourned to the next day for argument, the court did not abuse its discretion in permitting the commonwealth on the next morning to introduce further evidence as to the number and location of the wounds on the person of deceased.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 321.]

Error to Circuit Court, Wise County.

Floyd Freeman was convicted of murder in the first degree, and brings error. Affirmed.

D. F. Kennedy, of Youngstown, Ohio, for plaintiff in error.

John R. Saunders, *Atty. Gen.*, and *J. D. Hank, Jr.*, and *Leon M. Bazile*, *Asst. Attys. Gen.*, for the Commonwealth.

COCHRAN *et al.* *v.* HIDDEN *et al.*

June 16, 1921.

[107 S. E. 708.]

1. Tenancy in Common (§ 15 (5)*)—Possession of Grantee under Deed from Co-Owner of Life Estate Conveying Title in Fee Simple Adverse to Title of Other Co-Owners.—Where a grantor conveyed land to his son-in-law, in trust for the use of himself and wife during their lives, and of the survivor and their children during the life of the survivor, title in fee simple to pass to the heirs at law of the wife upon the death of such survivor, and after the death of the son-in-law his wife conveyed the land to another in fee simple,

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

the latter's entry and possession was not in privity with her title nor that of her children, but hostile and adverse; one entering upon land being presumed to enter under the title his deed purports to convey.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 131, 132.]

2. Tenancy in Common (§ 14*)—Entry of Grantee of Estate in Fee from Cotenant of Life Estate Is Disseisin of Other Cotenants.—Under a deed conveying an estate to grantor's son-in-law, in trust for the use of himself and wife during their lives, and of the survivor and their children during the life of the survivor, the children, after the death of their father, became joint owners of an estate for the life of the mother, so that, when the latter conveyed the whole estate to another, the latter's entry was a disseisin of the other cotenants.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 129.]

3. Tenancy in Common (§ 15 (5)*)—Possession of Grantee of Life Tenant under Conveyance in Fee Adverse to Remaindermen after Termination of Life Estate.—Under a deed to the son-in-law of grantor, in trust for the use of himself and wife during their lives, and of the survivor and their children during the life of the survivor, the same to pass in fee simple to the heirs at law of the wife on the death of such survivor, where the wife, after the death of her husband, conveyed the estate in fee to another, whose possession, followed by that of his successors in title, was for a longer period following her death than required to obtain title by adverse possession, such possession was adverse to the title of the children, though they were infants when the adverse entry was made; they being over 21 at the time of their mother's death.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 132.]

4. Tenancy in Common (§ 15 (6)*)—Rule that Possession Is Not Adverse until Notice of Disavowal of Owner's Title Inapplicable, Where Entry Not in Privity Therewith.—The rule that possession does not become hostile and adverse until there is a clear, distinct, and positive disavowal of the owner's title, actually or constructively brought home to the latter's notice, is not applicable to an entry under a deed from a co-owner of a life estate, conveying the estate in fee; such entry being not in privity with, but hostile and adverse to, the title of the other co-owners.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 128.]

5. Trusts (§ 349*)—Rule Purchaser of Property with Notice of Trust Must Submit to Execution Thereof Inapplicable against Owner by Adverse Possession with Merely Constructive Notice.—The doctrine that a purchaser of trust property, with actual or constructive notice of the trust, will be held to be a constructive trustee, and constrained to execute or submit to the execution of the trust, is in-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

applicable against one who has had mere constructive notice of the true owner's title and has acquired title by adverse possession.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 297.]

6. Limitation of Actions (§ 174 (2)*)—If Sufficient to Bar Legal Estate of Trustee, Adverse Possession Bars Equitable Estate of Cestui Que Trust.—An adverse possession sufficient to bar the legal estate of the trustee also bars the equitable estate of the cestui que trust.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 366.]

7. Limitation of Actions (§ 103 (4)*)—No Necessity for Notice of Disavowal of Owner's Title, Where Notice of Trust Constructive Only.—In the case of a purchase directly from a trustee or other fiduciary, where the purchaser's notice of the trust is constructive only, as when derived merely from recorded deeds in his chain of title, the statute of limitations begins to run at once against the cestui que trust on the entry of the purchaser into possession under a hostile claim of title, and no notice of disavowal of the true owner's title is necessary.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 395.]

8. Trusts (§ 61 (2)*)—Termination at Death of Beneficiaries.—Under a deed conveying an estate to grantor's son-in-law, in trust for himself and wife during their lives, and for the use of the survivor and their children, the fee to pay to the heirs at law of the wife upon the death of the survivor, the object of the trust being stated to be "that a sure and permanent home and support may be provided for his wife and children beyond the contingency of his personal success or failure in business," the express trust ceased on the death of the son-in-law, its object having been accomplished, and his title became extinct.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 324.]

9. Tenancy in Common (§ 15 (1)*)—Good Faith of Purchaser under Deed from Life Tenant Conveying Fee Not Essential.—Where a co-owner of a life estate conveys an estate in fee simple, not even good faith on the part of the purchaser is essential to his acquisition of title by adverse possession to the extent of his pedis possessio,

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 132.]

10. Adverse Possession (§ 70*)—Title of Bona Fide Claimant, Relying on Constructive Possession Based on Color of Title, Will Ripen by Adverse Possession.—Where a purchaser relies on constructive possession arising from the color of title given by his deed, if his claim of title is bona fide and the other requisites exist, his title will ripen by adverse possession, however bad the title may be.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 206, 207.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

11. Adverse Possession (§ 84*)—Constructive Notice to Purchaser that His Title Is Bad Will Not Impeach Good Faith.—Mere constructive notice to a purchaser that his title is bad will not of itself impeach the good faith of his claim of title.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 597.]

12. Tenancy in Common (§ 15 (10)*)—Purchaser's Claim of Title Presumed Bona Fide, Where Only Constructive Notice of True Owner's Claim Alleged.—In a suit in equity to establish ownership of certain land held by a purchaser under a deed from plaintiffs' mother, the co-owner with them, of a life estate until her death, they claiming the remainder in fee, where the bill did not allege any actual, but only constructive, notice to the purchaser of their claim of title, it will be inferred that the purchaser's claim under the deeds in his chain of title purporting to convey the fee was bona fide, so that the statute began to run against applicants on the death of their mother.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 597.]

13. Tenancy in Common (§ 15 (1)*)—Claimant Not Estopped from Relying on Adverse Possession by Admitting Defect in Title.—Where a grantor conveyed an estate to his son-in-law, in trust for the use of himself and wife during their lives, and of the survivor and their children, the fee passing to the heirs at law of the wife on the death of such survivor, and after the death of the son-in-law his wife conveyed the fee to another, a successor in title from such grantee was not estopped from relying on his title by adverse possession by a letter to one of the heirs requesting information necessary to remove a defect, nor by notice to him of a motion to substitute a trustee for the one deceased; the heirs not being prejudiced.

14. Adverse Possession (§ 109*)—Title by Adverse Possession Not Lost by Admission of Defects or by Negotiations to Quiet Title.—Where title has become perfect by adverse possession, it is not lost by an admission by the holder that such possession was not adverse, although in writing, or by an admission of defects in the title under which the adverse holder held, or by negotiations for the purpose of quieting title.

Appeal from Circuit Court, Culpeper County.

Suit by Benjamin C. Cochran and another against J. G. Hiden and others. From a decree dismissing the bill, plaintiffs appeal. Affirmed.

Henry Roberts, of Bristol, for appellants.

Grimsley & Miller, of Culpeper, for appellees.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.